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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~209~~ 57

THE RUTLAND RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CENTRAL VERMONT RAILROAD COMPANY.

IN ERROR TO THE CHANCERY COURT OF FRANKLIN COUNTY, STATE OF VERMONT.

FILED SEPTEMBER 23, 1891.

(14,858.)

THE LAW ASSOCIATION —OF— PHILADELPHIA.

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1 Franklin County. In Chancery.

VERMONT & CANADA RAILROAD COMPANY
v.
VERMONT CENTRAL RAILROAD COMPANY *et al.*

The petition of the Rutland Railroad Company for an order for the payment of rent in arrear and of the amount of taxes on the Addison railroad paid by the petitioner.

To the court of chancery in and for the county of Franklin, in the State of Vermont:

Your petitioner, The Rutland Railroad Company, a corporation organized and existing under the laws of Vermont, respectfully represents that it is the same company specified by that name in the order of this court in said cause made on the 17th day of January, 1884, and in the several preceding orders therein in which the Rutland Railroad Company is mentioned, beginning with the order of January 5th, 1871.

That the lease or contract mentioned in said order of January 5th, 1871, was entered into by said Rutland Company under and in pursuance of a vote of its directors, ratified and approved by a vote of said company, authorizing said contract, with the proviso, among other things, that the trustees and managers in said contract mentioned, being the party of the second part therein, should be authorized by this court to make and enter into the same.

That by said order of January 5th, 1871, the action of said trustees and managers in entering into said contract was approved, ratified, and confirmed, and they were directed to go on and execute the same according to the terms thereof, and the liabilities incurred by them thereunder were declared to be a charge upon the trust property and the earnings thereof under their management.

That thereupon, on or about February 8th, 1871, possession was taken by them, under said contract, of the property covered by the same, and was so held (except of the property referred to in the order in said cause of February 28th, 1873) until on or about July 1st, 1873, when the Central Vermont Railroad Company, be-
2 ing the same company mentioned by that name in said order of January 17th, 1884, and in preceding orders in said cause, beginning with the order of June 21st, 1873, succeeded to such possession.

That under said order of June 21st, 1873, said Central Vermont Company became, as receiver and manager appointed thereby, the successor of said trustees and managers, and as such entered as aforesaid into the possession of said property, except as aforesaid, and continued in such possession of said Rutland railroad and the Addison railroad and the property connected therewith, being the same railroads and property described as such in article I of the contract of modification hereinafter referred to, until some time in the year 1884.

That said contract first above mentioned remained unmodified until on or about February 25th, 1876, when the same was modified by a contract of modification executed by said Rutland Company and by said Central Vermont Company, as receiver and manager as aforesaid, subject to the ratification and confirmation thereof by this court.

That said contract of modification was so ratified and confirmed by the order of this court in said cause and has not since been altered.

That some time in the year 1884, to wit, on or about June 30th, the Consolidated Railroad Company of Vermont, being the same company mentioned by that name in said order of January 17th, 1884, under said order came into the possession and control of said property in connection with the other property of said trust, and has since been and is now, so far as its relation and the relation of said property to this court is concerned, in such possession and control.

But, as the petitioner is informed and believes, said property is now in fact in the possession of said Central Vermont Company for the purpose of operation under some arrangement with said consolidated company unknown to the petitioner and immaterial to this petition.

That, among other things, it was in said order of January 17th, 1884, provided that said Central Vermont Company should turn over to said Consolidated Company the said Rutland railroad and the lease thereof; that said Central Vermont Company should remain subject to the order and under the protection of this court until all their accounts are settled and passed; that said Consolidated Company should assume and carry out the said lease of the Rut-
3 land railroad, and pay or otherwise satisfy all just claims and demands then existing against said receivership, under the limitations in said order provided; that this cause remain upon the docket and said railroads and property remain subject to the summary order of the court therein for the enforcement of said order, and that in realizing from the assets to be assigned to said Consolidated Company under said order and in protecting rights under said lease of the Rutland railroad said Consolidated Company might and should do, in the name of said receivers and managers, all things necessary to be done.

That up to and including the month of July, 1883, except in the matter of interest hereinafter stated, the rent due under said contract of modification on the minimum basis therein specified, viz., 258,000 dollars per annum, has been fully paid, but that, as the petitioner claims and insists, there is now due and in arrear of rent upon said minimum basis fifteen hundred dollars for each month since said July, 1883, to date, with interest from the last day of each month, less seventeen hundred and eighteen dollars and forty-six cents ($1,718.46) paid February 6th, 1884, and thirteen hundred and sixty-nine dollars and four cents ($1,369.04) paid July 8th, 1884.

That in and by said contract of modification it was stipulated that the rent therein stipulated to be paid should be paid in equal monthly instalments and on the last day of each month.

That for a long time, to wit, from October, 1880, to date, payments of rent due under said contract have not been made on the last day of the month, as in said contract stipulated, but have been made in most instances at a much later day, usually on some day of the month following that in and for which the rent became due, and that thereby there has become and now remains due to the petitioner a large amount of rent and interest, in addition to the arrearages above specified, to wit, the amount of 6,000 dollars.

That the share of earnings of said Vermont Central, Vermont & Canada, Rutland and Addison railroads stipulated in article I of said contract to be paid to the petitioner has for some of the half years since the said contract of modification went into effect, to wit, as of February 1st, 1875, exceeded the rate of 250,000 dollars per annum, but that the amount of such excess has not yet been ascertained and cannot be by the agreement of the parties, and that the said party lessee denies that any such excess exists.

4 That under said lease and modification, as the petitioner claims and insists, the party lessee thereunder is bound to pay all taxes assessed on the property of the said Addison Railroad Company in the State of Vermont.

That said party lessee claims that it is not liable to pay said taxes or any taxes so assessed.

That the petitioner is bound under its contract with the said Addison Company referred to in said lease to pay all taxes so assessed on its property, and has by the refusal and neglect of said party lessee to pay them been obliged to pay such taxes assessed as aforesaid to the amount of four hundred and fifty-one dollars and fifty-one cents ($451.51).

That the said party lessee refuses and neglects to adjust and pay said arrearages of rent and interest and said Addison taxes.

The petitioner refers to all the orders and files in said cause, and to said lease and contract of modification, and craves leave to read the same or so much thereof as may be material upon the hearing of this petition and as part hereof.

By reason of the premises the petitioner respectfully asks that this court make an order on the said Consolidated Railroad Company of Vermont or on the said Central Vermont Railroad Company or on both of said companies, as to the court may seem right and effectual, to pay, by a short day to be fixed, the amount of rent and interest so due and in arrear as aforesaid, and also the amount paid by the petitioner as aforesaid for Addison taxes, and also that the court make an order for the proper ascertainment, in case of dispute, of the several sums so due, and also that the court make an order of notice to the said Consolidated Company and the said Central Vermont Company, and to such other parties to said cause as the court shall name, for such notice of a time and place when and where this petition will be heard, and that the court grant such

other and further relief in the premises as to the court shall seem meet.

RUTLAND RAILROAD COMPANY,
By PERCIVAL W. CLEMENT,
Vice-president.

5 STATE OF VERMONT, }
County of Rutland, } *ss.:*

At Rutland, in said county, this 9th day of November, 1886, personally appeared before me Percival W. Clement, of said Rutland, and made solemn oath that he is a director and vice-president of the said Rutland Railroad Company, and that the statements in the foregoing petition are true to the best of his knowledge, information, and belief.

JAMES C. BARRETT,
Master in Chancery.

STATE OF VERMONT, }
County of Franklin, } *ss.:*

The foregoing petition, verified by oath, having been duly filed, it is ordered that the same stand over for hearing at the court-house, in St. Albans, in said county, on the 9th day of December, 1886, at 2 o'clock p. m., and that notice of the pendency of said petition and of the hearing thereon be given by mailing, postage prepaid, and not less than six days before said hearing, a copy of said petition and of this order, attested by one of the petitioner's solicitors, to a solicitor of each of the parties to said cause appearing therein on the docket of said court, and that notice be given to all other parties interested by publication of the substance of said petition and order for four successive days in the St. Albans Messenger and in the Boston Daily Advertiser at least four days before said hearing.

Done this 10th day of November, 1886.

HOMER E. ROYCE, *Chancellor.*

STATE OF VERMONT, }
County of Franklin, } *ss.:*

I, James C. Barrett, of Rutland, in the county of Rutland, State of Vermont, on oath say that I mailed a copy of the foregoing petition and order, attested by me as a solicitor of the petitioner, postage prepaid, and more than six days before December 9th, 1886, to each of the following solicitors, viz., Messrs. B. F. Fifield, Aldace F. Walker, Wm. G. Shaw, Noble & Smith, C. H. Pitkin, W. L. Burnap, Edwards, Dickerman & Young, C. W. Witters, and E. R. Hard, and that said order and the substance of said petition, as
6 shown by the printed copy hereto annexed, were published for four successive days in the St. Albans Messenger, beginning November 29, 1886, and in the Boston Daily Advertiser, beginning Nov. 23, 1886.

JAMES C. BARRETT.

Subscribed and sworn to before me this 9th day of December, 1886, at St. Albans aforesaid.

ALDACE F. WALKER,
Master in Chancery.

(*Publication Notice.*)

In Chancery. Franklin County, Vermont.

VERMONT & CANADA R. R. Co.
v.
VERMONT CENTRAL R. R. Co. *et al.*

Substance of petition of Rutland R. R. Co. for order of payment of rent in arrears and of taxes on Addison R. R.

Petitioner represents that under the order of Jan. 17, 1884, said cause remains on the docket, and the railroads and property in administration in said cause remain subject to the summary order of the court for the enforcement of said order, which, among other things, provides for the protection and enforcement of the lease of the Rutland R. R. to the receivers and managers of said railroads and property in said administration.

That under said order the Consolidated R. R. Co. of Vermont is successor of the Central Vermont R. R. Co. as receiver and manager.

That under said lease rent is in arrear on the minimum basis (specified in the modification of said lease in 1876) to the amount of $1,500 for each month since July, 1883, except $1,718.46 paid Feb. 6, 1884, and $1,369.04 paid July 8, 1884; also to the amount of some $6,000 by reason of payments of rent being delayed beyond the stipulated rent day; also that for some of the half years since said modification the petitioner's share of the earnings, as provided in said modification, has exceeded the minimum rent stipulated, and petitioner is entitled to such excess; also that petitioner, under its contract with the Addison R. R. Co., has had to pay taxes assessed on the Addison R. R. property in Vermont to the amount of $451.51, which the party lessee under the lease of the Rutland R. R. is bound to pay and should now reimburse to the petitioner; that the party lessee refuses and neglects to adjust and pay said rent, interest, and taxes.

7 Petitioner asks for an order on the Consolidated Co., or on Central Vt. Co., or on both, to pay by a short day such rent, interest, and taxes; for an order for the ascertainment of the amounts in case of dispute; for an order of notice as to hearing on said petition, and for such further relief as shall seem meet.

Petition filed Nov. 10, 1886, and following order of notice issued:

STATE OF VERMONT, *County of Franklin*, } *ss:*

The foregoing petition, verified by oath, having been duly filed, it is ordered that the same stand over for hearing at the court-house,

in St. Albans, in said county, on the 9th day of December, 1886, at 2 o'clock p. m., and that notice of the pendency of said petition and of the hearing thereon be given by mailing, postage prepaid, and not less than six days before said hearing, a copy of said petition and of this order, attested by one of the petitioner's solicitors, to a solicitor of each of the parties to said cause appearing therein on the docket of said court, and that notice be given to all other parties interested by publication of the substance of said petition and order for four successive days in the St. Albans Messenger and in the Boston Daily Advertiser at least four days before said hearing.

Done this 10th day of November, 1886.

HOMER E. ROYCE, *Chancellor.*

BARRETT & BARRETT, *Solicitors.*

Nov. 23, 24, 25, 26.

(*Filing on Back of Petition.*)

Filed with me this 10th day of Nov., 1886.

HOMER E. ROYCE,
Chancellor.

8 *Answer.*

Filed February 7, 1887. Wilbur P. Davis, clerk.

The Consolidated Railroad Company of Vermont and the Central Vermont Railroad Company, answering the petition of the Rutland Railroad Company, filed Nov. 10, 1886, say:

That they deny that there is now due and in arrear to said Rutland Railroad Company the amount of rent in that behalf in said petition stated, and they deny that there is so due any amount whatever as rent or as interest upon deferred rent payments, or as rent computed upon the basis of gross earnings according to the provisions of the contract of modification, or as taxes upon the property of the Addison Railroad Company.

They say that they have in all things endeavored in good faith to abide by and perform all and singular the requirements and stipulations of said lease and contract of modification, and if it shall be made to appear to the court by the petitioner that any further sums are due they are ready and willing to pay the same.

And in default of such showing they pray to be hence dismissed with costs.

CONSOLIDATED R. R. CO. OF VERMONT,
CENTRAL VERMONT R. R. CO.,
By B. F. FIFIELD AND
ALDACE F. WALKER, *Sol'rs.*

Appointment of Master.

In the matter of the above petition by the Rutland Railroad Company, the Hon. H. H. Wheeler is appointed a special master to hear

the case and report the facts under the allegations in said petition and answer.

Done at chambers this 12th day of July, A. D. 1888.

W. G. VEAZEY, *Chancellor.*

Filed July 13, 1888.

WILBUR P. DAVIS, *Clerk.*

9 *Master's Report.*

Filed Dec. 14, 1888. Wilbur P. Davis, clerk.

To the honorable the court of chancery within and for the county of Franklin:

As special master upon the petition of the Rutland Railroad Company to compel payment of rent, I respectfully report—

That before entering upon the duties of this appointment I was duly sworn to their faithful performance by Benja. F. Fifield, Esquire, master in chancery. The parties appeared before me, by their respective presidents and solicitors, on the 7th day of August and 1st day of November, 1888, at St. Albans, in said county, and presented their respective proofs and allegations. Therefrom I find that on the 7th day of December, 1870, the Addison Railroad Company, by indenture, leased its railroad, which connects with the Rutland railroad, to the Rutland Railroad Company for the term of 99 years, reserving rent in a sum sufficient to pay seven per cent. dividends on enough capital stock to complete the road, to commence at its completion, which the Rutland Railroad Company covenanted to pay at its office in Boston, and also such taxes as might be assessed upon the property of the Addison Railroad Company in the State of Vermont. The road was completed and the Rutland Railroad Company entered into possession under the lease. The Rutland railroad connects with the Cheshire railroad at Bellows Falls, and, with other railroads, they form a line from points westward to Boston, over which business is done, for which collections are made and balances at stated times are remitted between the companies. These balances, on account of the greater flow of business eastward, are always largely against the Cheshire Railroad Company on this part of the line and in its favor on the party toward Boston. By the usual course of business a large part of the collections for this line of roads is made by that terminating in Boston. At that time monthly balances between that and the next road in the line were struck as soon as could conveniently be done after the expiration of each month, and the amount paid over, and then the balances between that and the next road were struck and the amount paid over, and so on in succession throughout the line. The balances between the Cheshire Railroad Company and the operators of the Rutland railroad would not be struck until about the 25th of the succeeding month.

10 On Dec. 30th, 1870, by written contract between the Rutland Railroad Company and the trustees and managers of the Ver-

mont Central and Vermont & Canada railroads, approved by the court, as shown by its records, the Rutland Railroad Company agreed that the trustees and managers and their successors in the trust should have the exclusive use and control of the Rutland and Addison railroads, with the right to operate them for the term of 20 years from January 1st, 1871. The agreement for the payment of rent as inserted in the contract was as follows:

Art. V. The parties of the second part agree to pay to the parties of the first part, for the consideration herein mentioned, three hundred and seventy-six thousand dollars ($376,000) annually, payable in semi-annual instalments of one hundred and eighty thousand dollars each, on the twentieth days of January and July in each year thereafter during the continuance of this contract, the first instalment to be payable on the twentieth day of July, 1871.

They also agree to pay the United States income tax chargeable upon the preferred stock and bonds of the Rutland Railroad Company, and, in addition thereto, to pay, on the first day of January, 1873, forty thousand five hundred dollars ($40,500).

On the first day of January, 1874, fifty-four thousand dollars ($54,000).

On the first day of July, 1874, forty thousand five hundred dollars ($40,500).

On the first day of January, 1875, forty thousand five hundred dollars ($40,500).

On the first day of July, 1875, sixty-seven thousand five hundred dollars ($67,500).

On the first day of January, 1876, sixty-seven thousand five hundred dollars ($67,500).

On the first day of July, 1876, eighty-one thousand dollars ($81,000).

On the first day of January, 1877, eighty one thousand dollars ($81,000).

On the first day of July, 1877, eighty-one thousand dollars ($81,000).

On the first day of January, 1878, eighty-one thousand dollars ($81,000).

On the first day of July, 1878, eighty-one thousand dollars ($81,000).

On the first day of January, 1879, eighty-one thousand dollars ($81,000).

On the first day of July, 1879, ninety-four thousand five hundred dollars ($94,500).

11 And at that rate for each succeeding six months during the continuance of this contract.

And the parties of the second part also agree to pay for the purpose of keeping up the organization of said Rutland Railroad Company and for incidental expenses eight thousand dollars annually.

As a part of the transaction the trustees and managers gave the Rutland Railroad Company an order upon the Cheshire Railroad Company as follows:

Vermont Central and Vermont & Canada railroad.

OFFICE OF PRESIDENT AND MANAGERS,
ST. ALBANS, VT., *Jan. 30th*, 1871.

E. Murdock, Jr., Esq., president Cheshire Railroad Company.

DEAR SIR: A contract for operating and managing the Rutland railroad, the Vermont Valley railroad, the Vermont & Massachusetts railroad (between Brattleboro and Grout's Corner), the Whitehall & Plattsburgh railroad (Northern and Southern divisions), the Plattsburgh & Montreal railroad, the Addison railroad, and the steamboat "Oakes Ames" by the trustees and managers of the Vermont Central and Vermont & Canada railroads having been made and entered into by us with the Rutland Railroad Company, extending for a period of twenty (20) years from the first day of January, 1871, you will please pay to the order of the Rutland Railroad Company the monthly balances which may be due from your company to us in settlement of traffic accounts to an amount not exceeding ten thousand (10,000) dollars per month during the year 1871 to Jan. 1st, 1872.

From and after the first day of January, 1872, you will pay to the Rutland Railroad Company or order, from such balances due to us, the sum of twenty thousand (20,000) dollars per month, such payments to be made by your company monthly in the due course of settlement between the roads now in practice, subject, however, to be revoked by us when we are ousted from possession of said railroad and property under any of the terms and stipulations contained in the contract between us and said Rutland Railroad Company. You will please take the proper receipts from the Rutland Railroad Company for such payments, which will be your vouchers for such amounts in settlement with us.

Very truly yours, J. GREGORY SMITH,
President Trustees and Managers.

The within order is accepted by vote of the directors of the Cheshire Railroad Company.

E. MURDOCK, JR., *President.*

Boston, Feb. 8th, 1871.

12 A clause referring to this order and to one upon the Vermont Valley Railroad Company, not now material, was inserted in the contract as follows:

Whereas, the party of the second part has given to the party of the first part an order upon the Connecticut River Railroad Company for such balance as may be due to the party of the second part monthly, from the business passing over the Vermont Valley road, not exceeding thirty thousand dollars monthly on an average, and has also given an order upon the Cheshire Railroad Company for such balance as may be due to the party of the second part to the amount of ten thousand dollars per month for the space of two years, and afterwards to the amount of twenty thousand dollars per month, now it is agreed by the parties hereto that all money re-

ceived by the parties of the first part on the orders aforesaid shall be applied free from any claim for interest to the payment of the rents for the different roads herein specified as the same become due.

The trustees and managers entered into the possession and enjoyment of the property under the agreement on the 21st day of June, 1873. The Central Vermont railroad became successor in the trust of the trustees and managers and received all the property and became subject to all their liabilities under the decree of the court, as shown by its records. Disputes having arisen, payments were stopped under this order until a further agreement in writing was entered into between the Central Vermont Railroad Company and the Rutland Railroad Company which contained provisions respecting this rent as follows:

Whereas, a certain contract in writing dated December 30, 1870, was heretofore entered into by the Rutland Railroad Company of the first part, and J. Gregory Smith, Joseph Clark, Worthington C. Smith and Benjamin P. Cheney, trustees and managers of the Vermont Central and Vermont & Canada railroads of the second part, which is hereby referred to as part hereof;

And whereas, said trustees and managers, for the purpose of securing the payment of the rent provided by the terms of said contract to be paid the said Rutland Railroad Company, drew their two several orders in favor of said Rutland Railroad Company, to wit: one upon the Connecticut River Railroad Company, and one upon the Cheshire Railroad Company, both dated January 30th, 1871, and both accepted by the respective companies upon which they were drawn; which orders and acceptances are referred to as part hereof;

13 And whereas, certain controversies have arisen between said Rutland Railroad Company and the Central Vermont Railroad Company, successor in said trust, as aforesaid, touching the rents due and to become due to said Rutland Railroad Company under said contract of December 30th, 1870, assignment of leases and orders drawn and accepted as aforesaid, as well as in respect to said Addison railroad and various other matters:

Now, for the purpose of effectually settling and terminating said controversies and all of them, and every and all matters of dispute, claim or question of every name, nature or description, that can or may now exist between said Rutland Railroad Company and said J. Gregory Smith and others, trustees and managers as aforesaid, or said trust whereof they were trustees and managers, or the Central Vermont Railroad Company successor in said trust as receiver and manager, and in consideration of the settlement and adjustment of all such disputes and controversies—

It is hereby mutually covenanted and agreed by and between said Rutland Railroad Company of the first part, and said Central Vermont Railroad Company, receiver and manager as aforesaid and in its capacity of receiver and manager only, of the second part, as follows:

Article I. From and after the first day of February, 1875, the

party of the second part hereto agrees to pay to the party of the first part as rent for the use, management and control of said Rutland and Addison railroads and the property connected therewith or with either the sum hereinafter mentioned, which shall be ascertained as follows:

The gross earnings of the Vermont Central, Vermont and Canada, Rutland and Addison railroads shall be semi-annually added together. Of the aggregate sum so arrived at there shall be set apart thirty-six and one-fourth per cent. thereof as the share of said Rutland and Addison railroads of said gross earnings; out of which share the party of the second part may retain seventy-five per cent. as an agreed proportion for the payment of all expenses of operating said Rutland and Addison railroads, and maintaining said roads, their structures and equipment in good order and condition, and keeping the same in repair, and of all other expenses, incumbent upon the party of the second part in the operation of said railroads, under and as provided in said contract of December 30th, 1870; and said party of the second part shall pay over to the party of the first part, as hereinafter provided, the balance being twenty-five per cent. of said thirty-six and one-fourth per cent., provided however, and said party of the second part hereby agrees, and does hereby guarantee that the amount ascertained as aforesaid
14 and payable to the party of the first part, shall amount to not less than the sum of two hundred and fifty thousand dollars for each and every year, commencing February 1st, 1875, during the continuance of said contract as modified hereby. And the party of the second part hereby covenants, promises and agrees to and with the party of the first part, to pay said annual sum of two hundred and fifty thousand dollars, and in addition thereto, the sum of eight thousand dollars annually, as provided in said contract of December 30th 1870, for the purpose of keeping up the organization of said Rutland Railroad Company and of paying the incidental expenses thereof. Said sums to be paid in equal monthly instalments and on the last day of each month during the time said party of the second part shall hold and possess said railroads under said contract as modified hereby. And it is hereby further understood and agreed that if in any year said twenty-five per cent. of said thirty-six and one-fourth per cent. gross earnings of said Vermont Central, Vermont & Canada, Rutland and Addison railroads shall exceed said sum of two hundred and fifty thousand dollars, the amount of such excess shall be paid to the party of the first part by the party of the second part semi-annually, and within thirty days from and after the first days of January and July of each year. The party of the second part also agrees to keep accurate accounts of said gross earnings, and the books and vouchers pertaining to said accounts are to be open to the inspection and examination of the president and treasurer of said party of the first part, or either of them. The foregoing provisions of this article to be in lieu of and to stand in place of the provisions of said contract of Dec. 30th, 1870, in relation to the rents payable for the use of said Rutland and Addison railroads.

This agreement was written by counsel for the Rutland Railroad Company, and when first drawn contained a clause that the Central Vermont Railroad Company should pay all taxes upon the property; that clause was not assented to and was left out of the agreement. This fact was shown by parol testimony, seasonably and specially objected to, in behalf of the Rutland Railroad Company. The payment of 20,000 per month by the Cheshire Railroad Company and 1,500 dollars per month by the Central Vermont Railroad Company were so made to that of the last day of July, 1883, inclusive, that no claim is now made in respect to them.

The payments by the Cheshire Railroad Company upon this order have been made when the monthly balances have been made up and paid to that company, which has usually been at about the 25th of the following month. The instalment for August, 1883, was not paid until after the 25th of September. The acting president of the Rutland Railroad Company spoke to the officers of the Cheshire Railroad Company about that delay, and objected to delay of payment beyond the last day of the month for which it was made and especially to delay beyond the 25th of the succeeding month. The instalments were accepted without further objection. Duplicate receipts were given by the Rutland Railroad Company to the Cheshire Railroad Company as follows:

$20,000. RUTLAND, VT., *Aug.* 25, 1883.

Received of the trustees and managers of the Vermont Central and Vermont & Canada railroads, per Cheshire Railroad Company, twenty thousand dollars on account of rent due Rutland Railroad Company for month of July, 1883, as per lease.

JOHN A. MEAD, *Treas.*

One was kept by the Cheshire Railroad Company and the other was sent by that company to the Central Vermont Railroad Company. Similar receipts passed in the same manner for the rent of each month to that for August, 1884. The receipt for that month was changed to read as follows:

$20,000. RUTLAND, VT., *Sept.* 28, 1884.

Received from the Central Vermont Railroad Company, per the Cheshire Railroad Company, twenty thousand dollars for rent for the month of August, 1884, under the order of the "trustees & managers," dated Feb'y 8, 1871. No right under the lease or as to any of the parties thereto is hereby waived, relinquished, or to be affected.

JOHN A. MEAD,
Treas. R. R. R. Co.

Similar ones have since been used for each month. No other communication is shown to have passed between these companies in respect to this rent. A system of settling daily balances and making weekly remittances covering a part of the time has been adopted by the Cheshire and Central Vermont Companies, but upon the express agreement that it should not affect the manner of paying these

monthly instalments, and under it the Cheshire Railroad Company has retained sufficient of the balances to meet them.

The Rutland Railroad Company claims to recover in this proceeding interest on each of these monthly instalments since that for July, 1883, to that for June, 1888, from the last day of the month for which the rent accrued to the time of payment, with interest on each item of interest from the time when the instalment on which it may have accrued was paid.

16 The interest on these deferred payments amounts to..... $5,022 31

The interest on these items of interest to Sept. 11, the first day of the term of court, to..... 784 86

The Vermont and Canada railroad in this State is 65 miles long, the Vermont Central 113, the Rutland and the Addison, treated by the parties as one road, respectively, 120 and 16, and together 136. Long previous to and during 1882 the Central Vermont Railroad Company, as receiver of the Vermont Central and Vermont & Canada railroads, was operating under leases not yet expired, approved by order of court, besides the Rutland and Addison railroads, the Vermont and Massachusetts railroad, in Vermont, 10 miles long; the Montpelier and White River railroad, 6 miles long, and the Brattleboro & Whitehall railroad, 36 miles long; each of all which was incorporated by a separate charter from this State.

The gross earnings of the Vermont Central and Vermont & Canada railroads, 178 miles in length, for the six months ending June 30, 1883, were... ... $796,128 23

Those of the Rutland and Addison, 136 miles in length, for the same period..... 283,384 89

In August, 1883, the commissioner of State taxes, under the provisions of No. 1 of the acts of the legislature of 1882, sent blanks to the Central Vermont Railroad Company for the return of a statement of the gross earnings of the railroads operated by that company during that period in this State; that company made return, among those of the other roads, except the Vermont Central, of the gross earnings of the Rutland and Addison, as stated and computed, the taxes on the gross earnings of each road as returned at 2 per cent. on the first $2,000 per mile, 3 per cent. on the first $1,000 above $2,000 per mile, and 4 per cent. on the first $1,000 above $3,000 per mile, and none exceeded $4,000 per mile. The tax on the Rutland and Addison, so computed, was $5,781.34, which the Central Vermont Railroad Company paid under protest and the tax commissioners accepted, with those on the other roads for which returns were made, and took receipts therefor. On September 12, 1883, the treasurer of the Vermont Central Railroad Company sent a letter to the treasurer of the Rutland Railroad Company, as follows:

John A. Mead, Esq., etc.

DEAR SIR: I have been absent since August 30th, or I should have communicated with you earlier on the subject of taxes paid

by us in behalf of your road. You are probably advised through Mr. Clement, pres't of your company, that the taxes made up and paid by this company (under protest) for the Rutland R. R. amounted for the half year, to June 30th, 1883, to $5,781.54. The law
17 requires the payment of the tax by the lessee and allows its recoupment from the rent. Will you please inform me what your pleasure is in regard to the settlement of this tax, and I have no doubt we can agree upon whatever method suits you? I have not remitted as yet the $1,500.00. I usually send the 1st of each month, and I will wait until I hear from you.

Yours truly, D. D. RANLETT.

No other evidence was offered of the protest mentioned in this letter. By direction of the officers of the Rutland Railroad Company, after consultation with counsel on the subject, the treasurer of that company on September 19, 1883, sent to the treasurer of the Central Vermont Railroad Company an answer to his letter, as follows:

DEAR SIR: Yours of Sept. 12th was received in due season and contents carefully considered, and after consultation with the attornies of this corporation I will say in reply the Rutland R. R. Co. claims that the tax referred to in your favor of the 12th inst. to be invalid against said company, and that this company is entitled to its rent in full as stipulated in its lease. Accordingly we demand payment of the same in full, without deduction on account of said tax, we leaving the matter to stand as before in order to preserve our legal rights in the premises unprejudiced. Of course, the matter of settlement and litigation of the question involved will go on with amicable spirit and without misunderstanding.

Yours very respectfully,

JOHN A. MEAD, *Treasurer.*

The president of the Central Vermont Railroad Company and the acting president of the Rutland Railroad Company in discussing other matters of their respective roads had some conversation afterwards in respect to these taxes and the liabilities of their respective companies for them, in the course of which the president of the Rutland Railroad Company, without intending to limit or being understood as limiting the grounds of the objections of that company to the payment of the taxes, stated in substance that as the taxes were upon gross earnings and that company had no gross earnings, that company could not be held liable for the taxes. No other ground for the denial of liability of that company for any of the taxes under that act or that and the amendment of it in 1884 has at any time been given to the Central Vermont Railroad Company.

18 For the 6 months ending December 31, 1883, the gross earnings of the Vermont Central and Vermont & Canada railroads were $904,010.46; of the Rutland and Addison, $347,124.85, and of all the roads operated by the Central Vermont Railroad Company, $1,239,154.08. In February, 1884, the Central Vermont Rail-

road Company made returns to the commissioner of State taxes of the gross earnings of all the roads as one line 366 miles long and computed and paid the taxes on the gross earnings of them on that basis, which amounted to $31,263.72. The share of the Rutland and Addison of these taxes on proportion of milage would be $11,617.12; on their own gross earnings, $7,693.52; on 36¼ per cent. of gross earnings of Vermont Central, Vermont & Canada, and Rutland and Addison roads, $11,341.04.

For the six months ending June, 1884, the gross earnings of the Vermont Central and Vermont & Canada were $690,313.82; of the Rutland and Addison, $281,294.63; of all the roads, $972,016.05.

On June 30, 1884, the Central Vermont Railroad Company, as receiver, pursuant to an order made in this cause, on notice to all parties, on January 17, 1884:

First. That the Central Vermont Company are hereby discharged as receivers and managers of the Vermont Central and Vermont & Canada railroads and all other property held by them as such receivers and managers, so far as the possession and management of said railroads and property are concerned; that they turn over to the Consolidated Railroad Company of Vermont said railroads, the equipment appertaining thereto, and all other railroads now possessed and operated by them as such receivers and managers and assign, transfer, and make over to said Consolidated Railroad Company of Vermont all personal property, including contracts, choses in action, the lease of the Rutland Railroad Company, stores, supplies, shop stock, shares of stock, bonds, cash on hand, and other assets, of whatsoever kind or nature, now held by them as such receivers and managers, first causing the same to be duly inventoried, and that they remain subject to the order and under the protection of this court until all their accounts are settled and passed, which is ordered to be speedily done.

Second. That the Consolidated Railroad Company of Vermont assume and carry out all contracts and agreements heretofore made by said receivers and managers authorized by the court or bind- upon the property, including the lease of the Rutland railroad, and pay and otherwise satisfy all just claims and demands now existing against said receivership under the limitation hereinafter made, and that this cause remain upon the docket, and said railroads and property remain subject to the summary order of the court therein for the enforcement of this order.

19 Fourth. That in realizing from the assets so to be assigned, transferred, and made over and in protecting rights under said lease of the Rutland railroad *and* the Consolidated Railroad Company of Vermont may and shall do in the name of said receivers and managers all things necessary to be done, but all such things shall be done at the expense of said Consolidated Railroad Company of Vermont.

Fifth. That the Consolidated Railroad Company of Vermont upon taking possession of said railroads and property file in court their covenant to do the things herein ordered to be done by them.

The Central Vermont Railroad Company made over all the prop-

erty mentioned in the order and assigned all its leases mentioned to the Consolidated Railroad Company of Vermont, and that company made and delivered its covenant pursuant to the order as follows:

Whereas the court of chancery in and for the county of Franklin and State of Vermont, in the case Vermont & Canada R. R. Co. against The Vermont Central R. R. Co. *et als.*, on the 17th day of January, 1884, did pass an order in the words and figures following:

(Copy of decree.)

And whereas at a meeting of the directors of the Consolidated R. R. Company of Vermont held on the 26th day of June, 1884, it was resolved that the president of this company be authorized for and in the name of this company to execute and file in court their covenant to do the things directed to be done by them in said order:

Now, therefore, in pursuance of said order, the Consolidated Railroad Company of Vermont do hereby covenant and agree with Wilbur P. Davis, clerk of the court of chancery in and for the county of Franklin and State of Vermont, and his successors in office, to do the things directed to be done by them in said order.

In witness whereof the Consolidated Railroad Company of Vermont have caused this instrument to be signed by their president and their official seal to be affixed hereto, all this thirtieth day of June, 1884.

[CORP. SEAL.] THE CONSOLIDATED RAILROAD COMPANY OF VERMONT,
By J. GREGORY SMITH, *President.*

Thereupon the Consolidated Railroad Company of Vermont leased all the roads to the Central Vermont Railroad Company, and that company has ever since continued in possession of and operated them under that lease. In August, 1884, that company made return to the commissioner of State taxes of the gross earnings of all the roads for the six months ending June 30, 1884, as one road, and computed and paid taxes on the gross earnings on that basis, which amounted to $21,839.22. The share of the Rutland and Addison of these taxes on proportion of milage would be $8,115.12; on their own gross earnings, $5,718.80, and on 36¼ per cent. on gross earnings of Vermont Central, Vermont & Canada, and Rutland and Addison, $7,845.84.

For the 6 months ending December 31, 1884, the tax on the actual gross earnings of the Rutland and Addison roads, paid as before by Central Vermont Railroad Company, Mar. 1, 1885, was $7,015.49.

The tax on 36¼ per cent. of the gross earnings of those and the Vermont Central and Vermont & Canada roads would have been $9,332.32.

For the 6 months ending June 30, 1885, the tax on the actual gross earnings of same, paid as before, Sept. 1, 1885, was $5,376.59.

That on 36¼ per cent. of same would have been $6,839.44.

For the 6 months ending December 31, 1885, the tax on the actual gross earnings of same, paid as before, March 1, 1886, was $7,482.53.

That on 36¼ per cent. of same would have been $8,659.12.

For the 6 months ending June 30, 1886, the tax on the actual gross earnings of same, paid as before, September 1, 1886, was $6,043.96.

That on 36¼ per cent. of same would have been $7,686.72.

For the 6 months ending December 31, 1886, the tax on the actual gross earnings of same, paid as before, March 1, 1887, was $8,120.15.

That on 36¼ per cent. of same would have been $10,734.48.

21 For the 6 months ending June 30, 1887, the tax on the actual gross earnings of the same, paid as before, September 1, 1887, was $6,938.50.

That on 36¼ per cent. of same would have been $8,484.04.

For the 6 months ending December 31, 1887, the tax on the actual gross earnings of same, paid as before, March 1, 1888, was $8,445.82.

That on 36¼ per cent. of same would have been $11,716.12.

There would be $1,500 rent due on the last day of each month from the Central Vermont Railroad Company to the Rutland Railroad Company, besides the $20,000 paid, as before stated, by the Cheshire Railroad Company. This was paid to the last day of July, 1883. Since then $1,718.46 of this rent was paid February 6, 1884, and $1,369.04 July 8, 1884, and nothing more except the payment of taxes as stated. If none of the sums paid for these taxes should be allowed towards this rent, there would be due on the first day of this term, including all instalments falling due previously, reckoning interest, $101,497.99.

If the amount of taxes actually paid to March 1, 1888, is to be deducted from the amount of rents, there was due on that day, without reckoning interest, $4,475.68.

Reckoning interest on balances, $3,545.28.

If the amount of the taxes on 36¼ per cent. of the gross earnings of the Rutland and Addison and the Vermont Central and Vermont & Canada roads is to be allowed against the rent, it was, without reckoning interest, overpaid March 1, 1888, $4,745.94.

Reckoning interest on balances, $14,196.12.

If there should be allowed against the rent what the tax would have been on the actual gross earnings of the Rutland and Addison roads for each 6 months ending December 31, 1883, and June 30, 1884, respectively, and what was actually paid for taxes on that basis for the other periods of 6 months, there would be due March 1, 1888, without reckoning interest, $4,355.90.

Reckoning interest on balances, $12,481.62.

22 A large part of these gross earnings accrued from transportation of persons and property between other States and countries through this State and between this State and other States and countries. In the course of the hearing the Rutland Railroad Company requested that a statement of that part be furnished. No request to keep or furnish a separate account of that part had at any time previously been made and the amounts could not be ascertained without great research, involving much time and labor.

It was considered best not to delay the hearing or report for a statement of them now. If by any decision it becomes material it can be as well furnished then.

The contracts, leases, and conveyances mentioned appear to have been the subjects of orders and decrees, which, with the orders and decrees mentioned, already appear of record in this cause and are referred to as so appearing as a part hereof. The other exhibits of the parties put in evidence upon the hearing and a computation upon the basis of a tax paid on the actual gross receipts of the Rutland and Addison roads and showing the method of other computations are returned herewith and referred to as a part hereof.

All of which is respectfully submitted to the court.

HOYT H. WHEELER,
Special Master.

Filed Dec. 14, 1888.

WILBUR P. DAVIS, *Clerk.*

23 Copies of receipts executed by the Rutland Railroad Company to the Cheshire Railroad Company for the twenty thousand dollars per month paid by the Cheshire Railroad Company to the Rutland Railroad Company upon the order of J. Gregory Smith, president trustees & managers, on E. Murdock, Jr., Esq., president Cheshire Railroad Company, dated January 30, 1871, and accepted by vote of the directors of the Cheshire Railroad Company February 8, 1871, for the monthly payments specified in said order for the months from July, 1883, to May, 1888.

(*Copy of Receipt for July*, 1883.)

$20,000. RUTLAND, VT., *Aug.* 25, 1883.

Received of the trustees and managers of the Vermont Central and Vermont & Canada railroads, per Cheshire Railroad Company, twenty thousand dollars on account of rent due Rutland Railroad Company for month of July, 1883, as per lease.

JOHN A. MEAD, *Treas.*

Similar receipt for $14,000 for part of Aug., 1883, dated Sept. 25, 1883, and like receipt for $6,000, dated Oct. 17, 1883.

Similar receipt for Sept., 1883, dated Oct. 17, 1883.

Do.	do.	Oct.,	do.	do.	Nov. 26,	do.
Do.	do.	Nov.,	do.	do.	Dec. 26,	do.
Do.	do.	Dec.,	do.	do.	Jan. 25,	1884.
Do.	do.	Jan.,	1884,	do.	Feb. 25,	do.
Do.	do.	Feb.,	do.	do.	M'ch 25,	do.
Do.	do.	M'ch,	do.	do.	Apr. 25,	do.
Do.	do.	Apr.,	do.	do.	May 26,	do.
Do.	do.	May,	do.	do.	June 25,	do.
Do.	do.	June,	do.	do.	July 25,	do.
Do.	do.	July,	do.	do.	Aug. 25,	do.

(*Copy of Receipt for August*, 1884.)

$20,000. RUTLAND, VT., *Sept.* 28, 1884.

Received from the Central Vermont Railroad Company, per the Cheshire Railroad Company, twenty thousand dollars for rent for the month of August, 1884, under the order of the "trustees & managers," dated Feb'y 8, 1871. No right under the lease or as to any of the parties thereto is hereby waived, relinquished, or to be affected.

JOHN A. MEAD,
24 *Treas. R. R. R. Co.*

Similar receipt for			Sept.,	1884,	dated	Oct. 25,	1884.
Do.	do.		Oct.,	do.	do.	Nov. 25,	do.
Do.	do.	(Nov.)	Dec.,	do.	do.	Dec. 24,	do.
Do.	do.		Dec.,	do.	do.	Jan. 24,	1885.
Do.	do.		Jan.,	1885,	do.	Feb. 25,	do.
Do.	do.		Feb.,	do.	do.	M'ch 27,	do.
Do.	do.		M'ch,	do.	do.	Apr. 25,	do.
Do.	do.		Apr.,	do.	do.	May 26,	do.
Do.	do.		May,	do.	do.	June 25,	do.
Do.	do.		June,	do.	do.	July 25,	do.
Do.	do.		July,	do.	do.	Aug. 25,	1885.
Do.	do.		Aug.,	do.	do.	Sept. 25,	do.
Do.	do.		Sept.,	do.	do.	Oct. 24,	do.
Do.	do.		Oct.,	do.	do.	Nov. 25,	do.
Do.	do.		Nov.,	do.	do.	Dec. 26,	do.
Do.	do.		Dec.,	do.	do.	Jan. 25,	1886.
Do.	do.		Jan.,	1886,	do.	Feb. 25,	1886.
Do.	do.		Feb.,	do.	do.	M'ch 25,	do.
Do.	do.		M'ch,	do.	do.	Apr. 24,	do.
Do.	do.		Apr.,	do.	do.	May. 26,	do.
Do.	do.		May,	do.	do.	July 1,	do.
Do.	do.		June,	do.	do.	July 23,	do.
Do.	do.		July,	do.	do.	Aug. 25,	do.
Do.	do.		Aug.,	do.	do.	Sept. 25,	do.
Do.	do.		Sept.,	do.	do.	Oct. 25,	do.
Do.	do.		Oct.,	do.	do.	Nov. 25,	do.
Do.	do.		Nov.,	do.	do.	Dec. 25,	do.
Do.	do.		Dec.,	do.	do.	Jan. 25,	1887.
Do.	do.		Jan.,	1887,	do.	Feb. 25,	do.
Do.	do.		Feb.,	do.	do.	Ma-ch 26,	do.
Do.	do.		M'ch,	do.	do.	Apr. 26,	do.
Do.	do.		Apr.,	do.	do.	May 26,	do.
Do.	do.		May,	do.	do.	June 25,	do.
Do.	do.		June,	do.	do.	July 25,	do.
Do.	do.		July,	do.	do.	Aug. 26,	do.
Do.	do.		Aug.,	do.	do.	Sept. 26,	do.
Do.	do.		Sept.,	do.	do.	Oct. 25,	do.
Do.	do.		Oct.,	do.	do.	Nov. 25,	do.
Do.	do.		Nov,	do.	do.	Dec. 30,	do.
Do.	do.		Dec.,	do.	do.	Jan. 25,	1888.

And signed by— E. T. SMITH, *Treas.*

Similar receipt to last for Jan., 1888, dated Feb. 27, 1888.
Do. do. do. Feb., do. do. M'ch 24, do.
Do. do. do. M'ch, do. do. Apr. 26, do.
Do. do. do. Apr., do. do. June 1, do.
Do. do. do. May, do. do. June 25, do.

Filed Dec. 14, 1888.

WILBUR P. DAVIS, *Clerk.*

25 Copy.

DEF'TS' EXHIBIT No. 2. Filed Dec. 14, 1888. Wilbur P. Davis, Clerk.

June 30, 1883.	Vermont and Canada.	Rutland and Addison.	Vermont and Mass.	Montpelier and White River.	Brattleboro and Whitehall.
Total gross earnings	225,584 00	283,884 89	59,665 94	5,348 74	21,360 55
Length of roads in Vermont	65 miles.	136 miles.	10 miles.	6 miles.	36 miles.
Total gross earnings in Vermont	225,584 00	283,384 89	24,693 12	5,348 74	21,360 55
Gross earnings per mile	3,470 52	2,083 71	2,496 31	891 45	593 35
Tax, 2 ¢ on the first $2,000	2,600 00	5,440 00	400 00	106 96	427 20
" 3 ¢ " " " 1,000 above $2,000	1,950 00	341 54	148 90		
" 4 ¢ " " " 1,000 " 3,000	1,223 36				
" 5 ¢ " all earnings above $4,000					
Total tax	5,773 36	5,781 54	548 90	106 96	427 20

	Dec. 31st, 1884.	June 30th, 1885.	Dec. 31st, 1885.	June 30th, 1886.	Dec. 31st, 1886.	June 30th, 1887.	Dec. 31st, 1887.
Central Vermont R. R. (Vermont Central & Vt. & Canada).							
Total gross earnings	783,768 87	610,209 06	706,223 95	664,787 62	847,968 38	708,406 32	904,991 17
Length of road, 178 miles.							
Gross earnings per mile	4,403 20	3,428 14	3,967 55	3,734 76	4,763 87	3,979 81	5,084 22
Tax, 2% on the first $2,000	7,120 00	7,120 00	7,120 00	7,120 00	7,120 00	7,120 00	7,120 00
" 3% " " " $1,000 above $2,000	5,340 00	5,340 00	5,340 00	5,340 00	5,340 00	5,340 00	5,340 00
" 4% " " " $1,000 " $3,000	7,120 00	3,048 35	6,888 96	5,231 49	7,120 00	6,976 25	7,120 00
" 5% " all earnings " $4,000	3,588 48	.....	.....	.....	6,798 44	.....	9,649 56
Total tax	23,168 48	15,508 35	19,348 96	17,691 49	26,378 44	19,436 25	29,229 56
Rutland R. R. & Addison.							
Total gross earnings	324,517 25	268,829 71	340,084 91	292,131 64	361,334 92	321,950 00	372,193 61
Length of road, 136 miles.							
Gross earnings per mile	2,386 15.6	1,976 69	2,500 62	2,148 03	2,656 90	2,367 28	2,736 72
Tax, 2% on the first $2,000	5,440 00	5,376 59	5,440 00	5,440 00	5,440 00	5,440 00	5,440 00
" 3% " " " $1,000 above $2,000	1,575 49	.....	2,042 53	603 96	2,680 15	1,498 50	3,005 82
Total tax	7,015 49	5,376 59	7,482 53	6,043 96	8,120 15	6,938 50	8,445 82
Vermont & Mass. R. R.							
Total gross earnings	62,495 05	44,282 13	57,075 71	51,243 70	61,337 50	44,238 82	65,497 05
Length of road in Vt., 10 miles.							
Total gross earnings in Vermont	31,872 47	22,318 19	30,923 62	27,353 89	32,895 30	21,818 59	35,748 29
Gross earnings per mile	3,187 24	2,231 81.9	3,092 36.2	2,735 38.9	3,289 53	2,181 86	3,574 83
Tax, 2% on the first $2,000	400 00	400 00	400 00	400 00	400 00	400 00	400 00
" 3% " " " $1,000 above $2,000	300 00	69 54	300 00	220 62	300 00	54 56	300 00
" 4% " " " $1,000 " $3,000	74 90	.....	36 95	.....	115 81	.....	229 93
Total tax	774 90	469 54	736 95	620 62	815 81	454 56	929 93
M. & White River R'y.							
Total gross earnings	8,079 58	6,445 10	10,201 13	7,968 10	10,864 48	8,409 73	13,007 11
Length of road, 6 miles.							
Gross earnings per mile	1,346 60	1,074 18	1,700 19	1,328 01	1,810 74	1,401 62	2,167 85

Copy of Def'ts' Ex. No. 4—Continued.

	Dec. 31st, 1884.	June 30th, 1885.	Dec. 31st, 1885.	June 30th, 1886.	Dec. 31st, 1886.	June 30th, 1887.	Dec. 31st, 1887.
Tax, 2% on the first $2,000	161 59	128 88	204 02	159 36	217 29	168 19	240 00
" 3% " " " $1,000 above $2,000							30 21
Total tax	161 59	128 88	204 02	159 36	217 29	168 19	270 21
B. & White Hall R'y.							
Total gross earnings	24,985 58	21,162 75	22,730 68	20,841 62	20,029 63	17,634 40	24,136 14
Length of road, 36 miles.							
Gross earnings per mile	694 04	587 85	631 41	578 94	556 38	489 84	670 45
Total tax, 2% on the first $2,000	499 70	423 25	454 62	416 84	400 59	352 68	482 72

30 *Computation on Basis of Tax on Actual Gross Receipts of Rutland and Addison Roads and Method of Other Computations.*

Sept. 1, 1883.	Taxes		5,781 36
	Rent August		1,500 00
	Overpaid		4,281 36
March 1, 1884.	Interest		128 44
	Cash Feb. 6		1,718 46
	Int.		6 58
	Taxes		7,693 52
			13,828 36
	Six months' rent, with interest on instalments		9,112 50
	Overpaid		4,715 86
Sept. 1, 1884.	Int.		141 47
	Cash July 8		1,369 04
	Int.		11 83
	Taxes		5,718 80
			11,957 00
	Rent and int.		9,112 50
	Overpaid		2,844 50
March 1, 1885.	Int.		85 33
	Taxes		7,015 49
			9,945 32
	Rent and interest		9,112 50
	Overpaid		833 82
Sept. 1, 1885.	Int.		25 01
	Taxes		5,376 59
			6,235 42
	Rent and interest		9,112 50
	Due		2,877 08
March 1, 1886.	Int.		86 31
	Rent and int.		9,112 50
			12,075 89
	Taxes		7,482 53
	Due		4,593 35

Sept. 1, 1886.	Int.	137 80
	Rent	9,112 50
		13,843 66
	Taxes	6,043 96
	Due	7,799 70
March 1, 1887.	Int.	233 99
	Rent and int.	9,112 50
		17,146 19
	Taxes	8,120 15
	Due	9,026 04

31

	Due	9,026 04
Sept. 1, 1887.	Int.	270 78
	Rent and int.	9,112 50
		18,409 32
	Taxes	6,938 50
	Due	11,470 82
March 1, 1888.	Int.	344 12
	Rent and int.	9,112 50
		20,927 44
	Taxes	8,445 82
	Due	12,481 62

Filed Dec. 14, 1885.

WILBUR P. DAVIS, *Clerk.*

32 Franklin County. In Chancery.

VERMONT & CANADA RAILROAD COMPANY
vs.
VERMONT CENTRAL RAILROAD COMPANY *et als.*

To the court of chancery in and for the county of Franklin and State of Vermont:

Your petitioners, The Central Vermont Railroad Company and The Consolidated Railroad Company of Vermont, respectfully represent that the Vermont Central and the Vermont & Canada railroads have been in possession of receivers & managers since 1861, appointed in the above-entitled cause.

That the Central Vermont Railroad Company are the present receivers and managers and have been so since 1873. They make part of this petition all of the proceedings in said cause to save needless prolixity and ask leave to read the same on the hearing.

They further represent that during said receivership established by the court in 1861 large debts and liabilities were incurred by the receivers and managers, amounting, in the autumn of 1882, to over $8,000,000; that in the autumn of 1872 the floating-debt paper of the receivers and managers went to protest, which then amounted to nearly $2,800,000; that immediately thereafterwards an enormous litigation grew up, both in the State and Federal courts, in Vermont, involving, among other things, the validity and priority of said receivers' indebtedness, and specially whether it bound the Vermont and Canada railroad; that in the summer of 1882 it was decided by the supreme court of Vermont, in the case — James R. Langdon *et als. vs.* The Vermont and Canada Railroad Company *et als.*, that the receivership debts as aforesaid was a lien upon both of said railroads superior to the claims of the Vermont and Canada Railroad Company, the Vermont Central Railroad Company, and its first and second mortgage bondholders. The Vermont and Canada Company, however, and the stockholders of the Vermont and Canada had at this time suits pending in the U. S. circuit courts in Vermont involving the same question, and they refused to be bound by the decision of the State court.

It was apparent that, although the litigation had been continued for so many years, it would continue for years to come unless there was some compromise for the existing difficulties.

33 Therefore, in November, 1882, the American Loan and Trust Company of Boston promulgated a plan for the consolidation of the Vermont Central and the Vermont and Canada railroads and the settlement of all disputes among the security-holders. The petitioners attach hereto a copy and ask leave to read the same on hearing.

This plan has been assented to by about $4,000,000 out of a whole issue of $4,357,000 of trust bonds; by about $2,500,000 of first-mortgage bonds out of a whole issue of $3,000,000; by the holders of about $2,600,000 of the Vermont and Canada stock out of a whole issue of $3,000,000, and by about $1,300,000 second-mortgage bonds out of a whole issue of $1,500,000. The plan became effective and binding before the first day of February, 1883. Immediately thereafter a foreclosure was had on the first mortgage in the U. S. circuit court for Vermont, and a new company was organized by the first-mortgage bondholders under the statutes of this State, called the Consolidated Railroad Company of Vermont. The decree of foreclosure and articles of association are made part hereof and are referred to.

The Consolidated Railroad Company of Vermont, on the — day of ——, 1883, by unanimous vote, voted a mortgage on what is known as the Vermont Central railroad and the equipment appertaining thereto and their interest in the Vermont and Canada railroad, and on the 8th day of June, 1883, the Vermont and Canada Railroad Company voted a mortgage of their road and their interest in the Vermont Central railroad and to reduce their rent to a nominal sum, and on the same day the mortgage by said companies of

the Vermont Central and Vermont and Canada railroads and all the equipment appertaining thereto was executed. The Vermont and Canada also reduced their rent to a nominal sum.

The aforesaid mortgage was to secure $7,000,000 of bonds to be issued by the Consolidated Company aforesaid in order to carry out and effect said plan of reorganization.

Your petitioners further show that said bonds have been issued by said Consolidated Railroad Company of Vermont and placed in the hands of the American Loan and Trust Company for distribution in accordance with said plan, and there seems to be no obstacle in the way of the complete execution of said plan except the closing of said receivership and the delivery of the property in its charge to the Consolidated Railroad Company of Vermont.

Your petitioners pray—

1st. That the Central Vermont Railroad Company may be discharged as receivers and managers of said railroads, so far as
34 the possession and management of said roads are concerned, on such terms and conditions as the court may prescribe, but that they be held subject to the order of the court for the settlement of their accounts, which may be ordered to speedily take place.

2nd. That the action of the Vermont and Canada Railroad Company and the Consolidated Railroad Company of Vermont in executing said mortgage to secure said bonds may be fully approved by the court, and for such other relief as to equity may appertain.

Done at St. Albans this 21st day of Nov., 1883.

CENTRAL VERMONT RAILROAD CO. AND
CONSOLIDATED R. R. CO. OF VERMONT,
By their solicitor, B. F. FIFIELD.

STATE OF VERMONT, }
Franklin County, } *ss*:

I, B. F. Fifield, on oath say that the facts set forth in the foregoing petition are true according to the best of my knowledge, information, and belief.

B. F. FIFIELD.

Subscribed and sworn to before me this 21st day of Nov., 1883.
HOMER E. ROYCE, *Chancellor.*

The foregoing petition, verified by oath, having been duly filed, it is ordered that the same stand over for hearing before me at the court-house, in St. Albans, Vt., on the 7th day of Dec., 1883, at 10 o'clock a. m., and that notice of the pendency of said petition be given by mailing a copy thereof, postage prepaid, to A. F. Walker and Wm. G. Shaw, Edwards & Dickerman, Clarence H. Pitkin and W. L. Burnap, and James C. Barrett, solicitors in said cause, and that notice be given to all other parties interested by publication of the substance of said petition for four (4) days successively in the

St. Albans Messenger and Boston Daily Journal, the last of which to be at least four days prior to said hearing.

Done in court this 21st day of Nov., 1883.

HOMER E. ROYCE, *Chancellor.*

The foregoing order of notice has been duly complied with.

B. F. FIFIELD.

Subscribed and sworn to at Montpelier, Vt., this 3rd day of December, 1883, before me—

WM. H. COCHRANE,
Notary Public.

35 Franklin County, September Term, 1883. In Chancery.

THE VERMONT AND CANADA RAILROAD CO.
vs.
THE VERMONT CENTRAL RAILROAD CO. *et als.*

The petition of the Central Vermont Railroad Company and the Consolidated Railroad Company of Vermont filed in said cause came on for hearing, agreeably to the order of the court, December 7, 1883, at 10 o'clock in the forenoon, in the court-house, at St. Albans, when it was made to appear that notice of the pendency of said petition and the hearing thereon had been given to all parties interested pursuant to said order, and then and there appeared for hearing upon said petition the Central Vermont Railroad Company, by their solicitors, B. F. Fifield and Daniel Roberts; the Consolidated Railroad Company of Vermont, by their solicitor, B. F. Fifield; the Vermont and Canada Railroad Company, by their solicitors, Wm. G. Shaw and Aldace F. Walker; the Grand Trunk Railway Company, by their solicitors, John Bell and Edwards, Dickerman & Young; the Rutland Railroad Company, by their solicitor, James Barrett, and James R. Langdon, by his solicitors, Pitkin & Huse; and the hearing was thereupon continued to December 19, 1883, at the same time of day and place, when said parties again appeared by their respective solicitors, and that branch of said petition asking that the action of the Vermont and Canada Railroad Company and the Consolidated Railroad Company of Vermont in executing a mortgage to secure $7,000,000 of bonds of said Consolidated Railroad Company of Vermont might be approved by the court was heard, and all persons, except said Rutland Railroad Company, assenting thereto, it was ordered and decreed as follows:

That the action of the Vermont and Canada Railroad Company and the Consolidated Railroad Company of Vermont in executing the mortgage described in said petition to secure $7,000,000 of bonds is hereby ratified and approved, and said mortgage is hereby established as a valid security according to its terms, provided that said mortgage shall in no way impair or lessen the rights of the Rutland Railroad Company secured to them by the lease heretofore executed by them to the trustees and managers of the Vermont Central and Vermont and Canada railroads.

And thereupon it was further ordered that the remainder of said petition stand over for hearing on January 17, 1884, at 10 o'clock in the forenoon, at the same place.

36 And now, on said last-named day, the remainder of said petition came on for hearing, and was heard upon proofs and arguments of counsel, B. F. Fifield and Daniel Roberts appearing for the Central Vermont Railroad Company, B. F. Fifield for the Consolidated Railroad Company of Vermont, Wm. G. Shaw and Aldace F. Walker for the Vermont and Canada Railroad Company, John Bell and John L. Edwards for the Grand Trunk Railway Company, James Barrett for the Rutland Railroad Company, and Clarence H. Pitkin for James R. Langdon; whereupon it is ordered and decreed:

First. That the Central Ver-ont Railroad Company are hereby discharged as receivers and managers of the Vermont Central and Vermont and Canada railroads and all other property held by them as such receivers and managers, so far as the possession and management of said railroads and property are concerned; that they turn over to the Consolidated Railroad Company of Vermont said railroads, the equipment appertaining thereto, and all other railroads now possessed and operated by them as such receivers and managers and assign, transfer, and make over to said Consolidated Railroad Company of Vermont all personal property, including contracts, choses in action, the lease of the Rutland Railroad Company, stores, supplies, shop stock, shares of stock, bonds, cash on hand, and other assets of whatsoever kind or nature now held by them as such receivers and managers, first causing the same to be duly inventoried, and that they remain subject to the order and under the protection of this court until all their accounts are settled and passed, which is ordered to be speedily done.

Second. That the Consolidated Railroad Company of Vermont assume and carry out all contracts and agreements heretofore made by said receivers and managers authorized by the court or binding upon the property, including the lease of the Rutland railroad, and pay and otherwise satisfy all just claims and demands now existing against said receivership under the limitation hereinafter made, and that this cause remain upon the docket and said railroads and property remain subject to the summary order of the court therein for the enforcement of this order.

Third. That outstanding receivership claims embraced in the plan of compromise attached to the petition, but which have not been and shall not be exchanged for bonds under said plan, be paid or satisfied by said Consolidated Railroad Company of Vermont according to the proportionate money values thereof, to be ascertained by having regard to the total amount of receivership claims embraced in said plan, exchanged and not exchanged, as compared with the total value of said railroads and property, in accordance with the decision of the court in the cause entitled James R. Langdon

37 and others against The Vermont and Canada Railroad Company and others.

Fourth. That in realizing from the assets so to be assigned, transferred, and made over and in protecting rights under said lease of the Rutland railroad the Consolidated Railroad Company of Vermont may and shall do in the name of said receivers and managers all things necessary to be done; but all such things shall be done at the expense of said Consolidated Railroad Company of Vermont.

Fifth. That the Consolidated Railroad Company of Vermont, upon taking possession of said railroads and property, file in court their covenant to do the things herein ordered to be done by them.

Done in court this 17th day of January, 1884.

HOMER E. ROYCE, *Chancellor.*

Filed Jan'y 17, 1884.

WILBUR P. DAVIS, *Clerk.*

38 *Decretal Order.*

Franklin County, September Term, 1888. In Chancery.

In the Matter of the Petition of THE RUTLAND RAILROAD COMPANY against THE CENTRAL VERMONT RAILROAD COMPANY and THE CONSOLIDATED RAILROAD COMPANY OF VERMONT.

This cause came on to be heard upon the petition, answer, and master's report filed therein, and, without argument and *pro forma*, it is ordered, adjudged, and decreed that the petition be dismissed, with costs to be taxed to the defendants.

Done in court this first day of January, 1889.

RUSSELL S. TAFT, *Chancellor.*

Filed Jan. 3, 1889.

WILBUR P. DAVIS, *Clerk.*

39 *Motion for Appeal.*

Franklin County, September Term, 1888. In Chancery.

In the Matter of the Petition of THE RUTLAND RAILROAD COMPANY against THE CENTRAL VERMONT RAILROAD COMPANY *et al.*

The petitioner prays that it may be allowed an appeal from the decree of the court dismissing said petition to the next term of the Franklin county supreme court.

C. A. PROUTY,
Solicitor for Petitioner.

Appeal allowed as per above motion.

R. S. TAFT, *Chancellor.*

Filed Jan. 3, 1889.

WILBUR P. DAVIS, *Clerk.*

40 *Stipulation for Continuance.*

Franklin County. In Chancery.

In the Matter of the Petition of THE RUTLAND RAILROAD COMPANY against THE CENTRAL VERMONT RAILROAD COMPANY and THE CONSOLIDATED RAILROAD COMPANY OF VERMONT.

In Supreme Court, Franklin County, January Term, 1889.

It is hereby stipulated and agreed that said cause at said term shall be continued to the general term for argument.

St. Albans, Jan'y 1, 1889.

C. A. PROUTY,
Solicitor for Petitioner.
ALBERT P. CROSS,
Solicitor for Defendants.

Filed Jan. 3, 1889.

WILBUR P. DAVIS, *Clerk.*

41 Supreme Court, General Term, 1890.

VT. & CANADA R. R. Co. *et al.*
v.
VT. CENTRAL R. R. Co. *et al.*, RUTLAND R. R. Co., Petitioner.

In this case, which was argued at the general term, 1889, The Rutland R. R. Co., petitioner, respectfully asks a re-argument upon that branch of the case which involves the right of the Central Vt. R. R. Co. to retain those sums paid by it as taxes, notwithstanding that the law levying the tax is unconstitutional.

Your petitioner assumed that if the law was void no payment could be made under it against the protest of the petitioner which would be binding upon it, and for that reason did not discuss that proposition. If the court now contemplates a contrary possibility your petitioner humbly asks that before the court deprives your petitioner of its property against its will and protest, by virtue of an unconstitutional law, it may be given the privilege of discussion.

C. A. PROUTY,
Sol'r for Rutland R'd Co.

WASHINGTON COUNTY, *ss:*

Filed Sept. 23, 1890.

MELVILLE E. SMILIE, *Clerk.*

42 *Mandate.*

In Supreme Court, General Term, 1890.

In the matter of the petition of the Rutland Railroad Company, it is considered, adjudged, and decreed as follows:

The act of the legislature of Vermont entitled "An act to provide a revenue for the payment of State expenses," approved Nov.

28, 1882, so far as it imposes a tax upon the gross earnings of railroads derived from interstate transportation of persons or property, is unconstitutional and void, as being in conflict with that clause of the Federal Constitution which confers upon Congress the exclusive power to regulate commerce among the States.

That section 14 of said act, providing that taxes assessed under said act upon the earnings of railroads operated by lessees thereof shall be paid by such lessees and charged against and deducted from the rents due to the lessor of such railroads, is constitutional and valid.

That all taxes paid to the State by the petitionee in accordance with the provisions of said act of 1882, notwithstanding its invalidity, as above held, were, as against the petitioner, valid payments and so *pro tanto* payments in extinguishment of rents due the petitioner.

That the petitioner is entitled to recover interest upon the deferred payments of monthly rent mentioned in the master's report from the last day of the month on which it is held such monthly instalments of rent respectively fell due under the lease and the modification thereof mentioned in said report.

The decree of the court of chancery is reversed and the cause remanded.

POWERS, *J.*,
For the Court.

WASHINGTON COUNTY, *ss.*:

Filed Nov. 12, 1890.

MELVILLE E. SMILIE, *Clerk.*

43 *Decree.*

Franklin County, April Term, 1891. In Chancery.

This cause came on to be heard at this term on motion for a decree pursuant to the mandate of the supreme court, and was argued by Mr. C. A. Prouty, for the petitioner, and Mr. A. P. Cross, for the petitionees, and thereupon, on consideration thereof, it is ordered, adjudged, and decreed as follows, pursuant to said mandate:

1. That the petitioner recover, by reason of the deferred payments up to and including the payment due June 30, 1888, the sum of $5,807.17, with interest to August 1, 1891, being in all the sum of $6,811.81, and interest thereon from said August 1st until paid.

2. That the defendant Central Vermont Railroad Company be allowed in reduction of unpaid rent those sums actually paid by it as taxes on account of the petitioner under No. 1, acts of 1882 and amendments thereto, up to March 1, 1891, the last payment being for the six months ending December 31st, 1887, except for the six months ending December 31st, 1883, and the six months ending June 30, 1884, and that for those periods it be allowed in reduction as aforesaid such sum as the taxes would have amounted to if computed upon the actual gross earnings of the Rutland and Addison railroads considered as one independent road; that the petitioner

recover as the balance due it by reason of unpaid rent up to and including the month of February, 1888, after making the aforesaid deduction on account of taxes, the sum of $12,481.62, with interest from September 11, 1888, to August 1, 1891, being in all the sum of $14,640.94, and interest thereon from said August 1st until paid.

3. That neither party take any costs.

And, further, the Central Vermont Railroad Company and the Consolidated Railroad Company of Vermont are hereby ordered and directed to pay forthwith to the petitioner the aforesaid sums, being in all the sum of $21,452.75, and interest thereon from August 1st, 1891.

Done in court this first day of August, A. D. 1891.

JOHN W. ROWELL, *Chancellor.*

43½ I hereby certify that the foregoing decree is drawn in accordance with the orders of the court, and that the same is correct in form and substance.

C. A. PROUTY, *Sol'r.*

Filed Aug. 14, 1891.

WILBUR P. DAVIS, *Clerk.*

44 *Appeal Motion.*

Franklin County, April Term, 1891. In Chancery.

And now comes the defendants in the above-entitled cause, The Central Vermont Railroad Co. and The Consolidated Railroad Co. of Vermont, by Albert P. Cross, their solicitor, at the term of said court aforesaid, at which a final decree of said court, in pursuance of a mandate from the supreme court of Vermont, dated August 1st, 1891, has been rendered and filed, and complains of said final decree, and for cause of complaint and objection thereto says that said final decree so rendered and filed does not conform to the mandate of the supreme court in said cause, in this: that whereas said mandate provides "that all taxes paid to the State by the petitioner in accordance with the provisions of said act of 1882, notwithstanding its invalidity, as above held, were, as against the petitioner, valid payments and so *pro tanto* payments in extinguishment of rent due the petitioner;"

And whereas from the records in said cause it appears that all the taxes paid to the State by the petitioner in accordance with the provisions of said act of 1882, being applied as payments in extinguishment of rent due the petitioner, would leave a balance due to the petitioner of only three thousand five hundred and forty-five and $\frac{28}{100}$ dollars, with interest thereon from Sept. 11th, 1888, to the date of said final decree, as the amount of said decree upon said term of unpaid rents;

The said final decree so rendered and filed in pursuance of said mandate allows, in the payment and extinguishment of rents due the petitioner, a much less sum than the amounts paid by petitioner for taxes in accordance with the provisions of said act of 1882, and

finds due and directs payment by said petitioners of a much larger sum upon said item of unpaid rents than is justly due thereon, as shown by said record, to wit, the sum of twelve thousand four hundred and eighty and $\frac{62}{100}$ dollars:

Said defendants do hereby therefore appeal from said final decree to the next term of the supreme court, to be held at St. Albans, within and for the county of Franklin, on the second Tuesday of January, 1892, and do hereby file in said court of chancery
45 this their notice therefor at the term of said court at which said final decree was made.

CENTRAL VERMONT R. R. CO. AND
CONSOLIDATED R. R. CO. OF VERMONT,
By ALBERT P. CROSS, *Their Solicitor.*

Filed Aug. 14, 1891. WILBUR P. DAVIS, *Clerk.*

Appeal allowed and cause passed to the supreme court this 1st day of August, A. D. 1891.

JOHN W. ROWELL, *Chancellor.*

46 UNITED STATES OF AMERICA, }
State of Vermont. }

To the Hon. John W. Rowell, a judge of the supreme court of the State of Vermont and chancellor of the court of chancery, sitting within and for the county of Franklin:

The petition of the Rutland Railroad Company respectfully shows that on the 1st day of August, A. D. 1891, the court of chancery for the county of Franklin rendered, in obedience to the final mandate of the supreme court of the State, a final decree against your petitioner in a certain cause entitled Vermont and Canada Railroad Company *v.* Vermont Central Railroad Company *et al.*, in which your petitioner was the complainant and the Consolidated Railroad Company of Vermont and the Central Vermont Railroad Company were the defendants, as will appear by reference to the records and proceedings in said cause; that said final decree was rendered as aforesaid in obedience to a mandate of and from the supreme court of the State of Vermont; that the said supreme court is the highest court in said State in which a decision could be had in said cause; that the said court of chancery is the highest court in said State in which a final decree pursuant to said mandate could be rendered in said cause, and that the entire record thereof is now remaining in said last-named court.

And your petitioner claims the right to remove said decree to the Supreme Court of the United States upon a writ of error under section 709 of the Revised Statutes of the United States, because—

The petitioner is a railroad corporation owning a railroad in the State of Vermont, which was at the date of bringing said suit held and operated by the defendant Central Vermont Railroad Company under a lease by the terms of which both defendants were, as it is claimed, liable for the payment of the rent. By the terms of said lease as in effect at and previous to the bringing of said suit the defendants had agreed to pay the complainant a fixed sum on

a fixed day by way of such rent. The suit was brought to recover, first, for certain interest due by reason of the fact that the said rent had not been paid upon the date stipulated for in said lease; 2d, to recover for certain amounts of the principal due and unpaid. With reference to the first claim, the judgment of the supreme court and the decree of the court of chancery was in favor of the com-
47 plainants. With reference to the second claim, the defendants admitted that said rent had not been paid to the complainant, but set up in justification that they had paid it to the State of Vermont by way of taxes, in obedience to the provisions of No. 1, acts of 1882 and amendments thereto. This act provided, among other things, that in case of a railroad under lease the tax should be paid by the lessee and deducted from the amount due the lessor as rent. The complainant insisted in reference to this act:

1st. As to that provision which provided that the lessee should pay to the State, instead of paying to the lessor, a certain portion of the amount which it had agreed to pay, that it was unconstitutional under the Constitution of the United States, as impairing the obligation of a contract.

2d. That the tax itself, being the tax upon the gross receipts of a railroad, which were almost entirely derived from interstate commerce, was unconstitutional under the Constitution of the United States, as a regulation of commerce, and that since the act was void it could be no justification to the defendants for the payments made in obedience to it against the protests of the complainant. The supreme court of Vermont held that the law did not impair the obligation of the contract, and that it was valid in respect of this subject in controversy; that it did afford a justification and protection as to the sums deducted from the rent due the complainant and paid to the State as taxes, and that the complainant could not recover these sums, as fully appears from the opinion of the supreme court, a copy of which is attached hereto.

Whereof your petitioner prays the allowance of a writ of error, returnable to the Supreme Court of the United States, and a citation.

RUTLAND RAILROAD COMPANY,
By its solicitor, C. A. PROUTY.

Upon reading the foregoing petition of the Rutland Railroad Company, praying for the allowance of a writ of error from the Supreme Court of the United States to review the judgment of the supreme court of the State of Vermont, and the decree of the court of chancery for the county of Franklin carrying the same into effect, said decree being dated August first, A. D. 1891, it appearing from the said petition and the record of the case that a proper case for the allowance of said writ is presented, it is ordered that the same be allowed.

JOHN W. ROWELL,
Judge of the Supreme Court of Vermont and Chancellor of the Court of Chancery in and for the County of Franklin, in said State.

VERMONT AND CANADA RAILROAD CO.
vs.
VERMONT CENTRAL RAILROAD COMPANY *et al.*, RUTLAND RAILROAD CO., Petitioner; CENTRAL VT. RAILROAD CO. *et al.*, Petitionees.

I.

The opinion of the court was delivered by—

POWERS, *J.*:

Two questions have been argued before us:

1st. Whether the monthly payments of rents due under the modified lease draw interest from the last day of the month on which it is claimed the- mature; and,

2nd. Whether the petitionee is liable to the petitioner for the unpaid rents withheld to meet the taxes assessed upon the gross earnings of the Rutland road.

By the terms of the original lease of the Rutland and Addison railroads, made in 1870, the rent was payable semi-annually on the 20th days of January and July in each year. As a part of the arrangement between the parties and as security for the payment of the stipulated rent, the trustees and managers of the Central and Canada roads gave to the Rutland an order upon the Cheshire road to pay to the Rutland, for the year 1871, a sum not exceeding $10,000.00 per month from the balances due in settlement of traffic accounts, and after that year the sum of $20,000 per month from the same source, such payments to be made monthly, in the due course of settlements between the roads now in practice.

The due course of settlement then in practice between the Cheshire and Canada and Central roads was for the several roads constituting the line terminating in Boston to adjust and pay the monthly balances as soon as practicable at the end of each month's business. Under this practice the balance due from the Cheshire to the Canada and Central would not be struck until about the 25th of the succeeding month.

A clause in the original lease, after reciting the giving of the order aforesaid upon the Cheshire, provided that all monies received by the Rutland upon such order should be applied to the payment of rent due under the lease free from any claim for interest.

49 As the contract then stood between the parties to the lease, it is clear that the clause providing that the sums paid monthly by the Cheshire, which the Rutland was to apply to the payment of its rent free from all claim for interest, was inserted for the benefit of the Rutland. The rent its due was only payable semi-annually; the balances due under the Cheshire order were to be received by the Rutland monthly; the balances were to be applied in payment of rent; thus in part a considerable part of each half year's rent would be received by the Rutland before such half year's rent

was due. Nobody could thus be charg-able with interest except the Rutland by reason of the advance payment of its rent.

On February 25th, 1876, the original lease in force between the parties was in certain respects modified. The rent, which under the original contract was payable semi-annually, was made payable in equal monthly instalments and on the last day of each month. The basis for ascertaining the amount of rent payable was fixed, and the Cheshire order was by the modified contract to "stand as a continuing security for the payment of the rents herein stipulated to be paid." A clause in the modified contract also provided in substance that the Cheshire order should be paid practically as it had been under the original lease, and in fact the balances under it have been paid to the Rutland about the 25th of the month following the month in which such balances were earned.

The petitioner now seeks to recover interest on these deferred payments.

As already seen, the rent under the modified contract was payable monthly and on the last day of the month. A day certain was fixed for its payment. If not paid when due, it is clear that interest would be chargeable upon it until it was paid.

The Cheshire order was not accepted as a payment of rent, but as collateral security for its payment. The lessees owed the month's rent on the last day of each successive month without regard to the fact that anything was or was to be realized from the "continuing security" afforded by the Cheshire order.

Under the original contract the Rutland, by way of the Cheshire order, received its rent before it was due, and had the right to apply the amount so received without accounting for interest. Under the modified contract the rent has not been paid when due, and no clause in the modified contract says anything respecting interest upon payments made under said order or otherwise. The clause in the original contract providing for the application of the proceeds of the Cheshire order to the payment of rent free
50 from any claim for interest related to the advance payments which the Rutland then received. Under the modified contract the clause which was inserted in the original contract for the purpose of protecting the Rutland from a liability cannot now be used to protect the other contracting party from a like liability, but the modified contract making no reference to it at all, the clause has ceased to be operative for any purpose, as the basis upon which the rent is payable has been so changed as to make it inapplicable.

The petitioner is entited, therefore, to interest upon the deferred payments of monthly rent from the last day of each month when such payments respectively matured.

The defendants have retained a considerable sum from the rents payable to the Rutland, and paid the same to the State as taxes assessed under the acts of 1882 and 1884 upon the gross earnings of the Rutland road while in defendant's possession.

The Rutland Company contends that the State law referred to, so far as it seeks to impose a tax upon the earnings derived from inter-

state commerce, and a very large proportion of the earnings referred to were of this character, is unconstitutional, and that the defendants were not justified in paying the taxes assessed upon them; that all transportation of freights and persons from points without to points within the State or from points within to points without the State, as well as from points without through the State to points without, is commerce between the States is abundantly settled, both upon principle and upon authority. Fargo *vs.* Stevens, 121 U. S., 330.

All agree that interstate commerce is not the subject of State regulation, and the cases are uniform in holding that a tax upon such commerce is a regulation within the inhibition of the Federal Constitution. Fargo *v.* Stevens, *supra;* Philadelphia Steamship Co. *v.* Pennsylvania, 122 U. S., 326, and cases there cited. All agree that the decisions of the highest Federal court are binding upon this court when Federal questions are involved, and that the only inquiry open to us touching the validity of the tax now in question, so far as it lays hand upon the earnings derived from interstate commerce, is what is the declared doctrine of the United States Supreme Court upon the subject.

That the course of decision in that court upon this and analogous subjects has not been entirely uniform the diligence of counsel in this case has fully demonstrated; but the case last above cited is the latest decision of that court which has come to our attention, and so for the purposes of this case that decision must be accepted as the supreme law of the land.

51 Fortunately the facts of that case were quite like those of the case at bar. There, as here, the State of Pennsylvania had levied upon the gross receipts of a corporation chartered by itself, and there, as here, such receipts were the product of interstate commerce. The court reviews the authorities and, through Mr. Justice Bradley, held that the Pennsylvania law was unconstitutional. It would serve no useful end to trace the line of reasoning adopted in this case, nor to attempt a reconciliation of this decision with earlier ones of the same court claimed to be variant from it. We, as judges of a State court, are bound by the very language of the Federal Constitution to accept the construction of any part of that Constitution made by the supreme court, and in this case the reasoning of that court seems to us to be entirely unanswerable. We hold, therefore, that our corporation tax law, so far as it seeks to tax the earnings derived from interstate commerce, is unconstitutional, as it interferes with that commerce, the regulation of which is within the exclusive control of Congress.

It is further contended that our law also violates another clause of the Federal Constitution, in that it impairs the obligation of the contract subsisting between the parties respecting the payment of rent by requiring the lessee to pay the tax and deduct the same from the stipulated rent, and the case of Murray *v.* Charleston, 96 U. S., is relied upon as supporting this contention.

It is quite true that some of the language of Justice Strong in the opinion in that case gives some color to the contention now

made; but this language is to be construed with reference to the case then in hand. In that case the city of Charleston was owing a non-resident creditor a debt bearing interest. Under a law of the State the city passed an ordinance directing its officers to deduct from the interest payable upon the debt a certain sum as a tax upon the debt. The question was, could the city do this? And the court held that it could not, as it thereby would impair the obligation of the contract. It is to be noticed that the city had no right to tax the creditor at all. He was a non-resident, and the debt had its situs in the place of his domicile, and not in Charleston. If the creditor had residence in Charleston and thus had been within the jurisdiction for purposes of taxation, there could be no doubt that the city could have properly taxed him upon the indebtedness. The only question which could then arise would be as to the propriety of the method adopted for the collection of the tax. But in the case at bar both the Rutland and the Central and the rent due from the Central to the Rutland are proper subjects-matter for taxation under our law. The case, then, is clearly distinguishable in its facts from Murray *v.* Charleston, and we think the method prescribed for the collection of the tax is no impairment of
52 the contract to pay the rent due under the lease. In Osborne *v.* Nicholson, 13 Wall., 654, the court says: All contracts are inherently subject to the paramount power of the sovereign, and the exercise of the power is never understood to involve their violation, and is not within that provision of the National Constitution which forbids a State to pass laws impairing their obligation. The power acts upon the property which is the subject of the contract and not upon the contract itself. To the same effect see West River Bridge Co. *v.* Dix, 6 How., 532.

When, therefore, the parties made the lease whereby the Central undertook to pay a stipulated rent to the Rutland, both made their contract with notice of and in subordination to the right of the State to exact from the fruits of their contract by way of taxation such sum as it might properly collect for public purposes. Having, then, the right to levy the tax, the method to be adopted for its collection is purely a question of legislative discretion, with which the court has no power to interfere so long as no legal or constitutional rights are disturbed. The whole power of taxation under our system of government is lodged in the legislature, subject only to constitutional limitations. What subjects-matter shall be selected, what amounts shall be assessed, and the methods of assessment and collection of taxes are solely questions for the legislature to determine. If in any respect the constitutional rights of the tax-payers are involved, he has his remedy; but beyond this the legislative power cannot be questioned. In this case the law itself made the assessment. This has been held to be no impairment of the tax-payer's rights. Sav. Bank *v.* U. S., 19 Wall., 227.

We have a statute by which a collector may collect a tax by the trustee process. In the case of non-residents, taxes assessed upon national bank shares of stock are paid by the cashier and deducted from the dividends declared upon such shares. The same method

is adopted in the case of other corporations. In the case St. Albans *v.* Nat. Car Co., 57 Vt., our statute, R. L., sec. 284, providing that taxes assessed upon the stock of non-resident stockholders in a corporation shall be paid by the corporation and the corporation shall have a lien upon the stock and its dividends as security and may deduct the taxes paid from dividends declared, is constitutional. Taxes must necessarily be collected by summary methods, and we see no reason why the legislature could not direct the Central to retain and pay over to the State from funds in its hands belonging to the Rutland all taxes which might be assessed against the Rutland. The contract to pay rent is not impaired, because it was made subject to just that kind of impairment, and so the Rutland gets all under it that it can legally claim.

53 We hold, therefore, that sec. 14 of our corporation tax law is not unconstitutional in respect to the method prescribed for the collection of taxes assessed upon the earnings of railroads operated by lessees.

But it by no means follows because the defendant has paid to the State taxes under a law afterwards held to be void by withholding the amount thereof from the rent that the Rutland can now claim the balance of its rent for this reason.

Down to May 27th, 1887, the date on which the decision of the court in 122 U. S., above cited, was promulgated, the doctrine of the cases decided by the Supreme Court upheld the constitutionality of the taxation in question. State tax on railway tax receipts, 15 Wall., 284; Minot *v.* P., W. & B. R. R. Co., 18 Wall., 206, and the numerous cases cited in the defendant's brief. Accordingly all payments theretofore made were, so far as the validity of the tax was involved, payments made in obedience to law. It is an elementary principle that a contract valid under an existing law and payments made upon it will not be invalidated by subsequent legislation or subsequent judicial interpretation of the law. The decision of a court of competent jurisdiction upholding the validity of an existing law validates everything done under it so long as such adjudication remains unchanged. Gelpecke *v.* City of Dubuque, 1 Wall., 175; Havermeyer *v.* Iowa City, 3 Wall., 294; Cass Co. *v.* Johnston, 95 U. S., 360; Douglass *v.* Pike Co., 101 U. S., 679; 16 How., 432; 19 Wall., 677.

As said in Gelpecke *v.* Dubuque, 1 Wall., 175: "The sound and true rule is that, if the contract when made was valid by the laws of the State as then expounded by all departments of the Government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of the legislature or decision of its courts altering the construction of the law. The same principle applies where there is a change of judicial decision as to the constitutional power of the legislature to enact the law." Affirmed in Havermeyer *v.* Iowa City, 3 Wall., 294, and in Douglass *v.* Pike Co., 101 U. S., 677: "The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would

be given to a legislative amendment—that is to say, make it prospective, but not retroactive.

54 After a statute has been settled by judicial construction the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

And in Lyon *v.* Richmond, 2 Johns. Chan., 51, "every man is to be charged at his peril with a knowledge of the law. There is no other principle which is safe and practicable in the common intercourse of mankind; and to permit a subsequent judicial decision in any one given case on a point of law to open or annul everything that has been done in other cases of the like kind for years before, under a different understanding of the law, would lead to the most mischievous consequences. Fortunately for the peace and happiness of society, there is no such pernicious precedent to be found. This case, therefore, is to be decided according to the existing state of things when the settlement in question took place."

Suppose this court should hold to-day that our tax law is valid and a year hence should reverse its decision and hold it invalid, would it be seriously claimed that rights claimed and liabilities assumed meantime would be upset? No such rule of law could be tolerated for a moment.

The Supreme Court of the United States is the supreme arbiter when a Federal question is involved. Down to 1887 that court ruled the Federal question now under consideration in a way that upheld the legislation in question. Its decisions then promulgated were the supreme law of the land, absolutely binding upon both parties to this cause. Hence all payment of taxes made under our law, which down to that time must be treated as valid for present purposes, were made in strict conformity of law.

The subsequent change in the decision of the U. S. Supreme Court is only operative prospectively, and all acts done in obedience to the former decisions are valid and cannot be disturbed.

Again, the taxes in question were taxes which, as between these parties, it was the duty of the Rutland Company to pay.

Under the original as well as the modified lease no provision for the payment of taxes was made. The lease being silent, the duty to pay, under the common law, rested upon the lessor. Taylor, Landlord & Tenant, sec. 341, 395. Moreover, the precise question arose between the parties and was decided by this court at the January term, 1878, in Rutland county. In that case certain

55 taxes had been assessed upon the Rutland road under the provisions of the acts of 1874 and 1876, taxing the real estate of railroad corporations. The defendants then, as now, operating the road under the lease aforesaid declined to pay these taxes; whereupon the Rutland Company brought its petition to the court of chancery, praying, among other things, that the lease and the modification of the same in force between the parties "may be con-

strued and the rights and liabilities of the parties thereunder may be determined touching their duty and obligation or the duty and obligation of either to pay said taxes so assessed as aforesaid as well as all future taxes that may be assessed on the real estate of your orator and said trustees and managers."

The case was fully argued and fell to Chief Justice Pierpoint, who prepared no opinion, but the mandate declared "that the defendant is not liable to pay taxes assessed upon the property of the Rutland Railroad Company."

It is clear that if the taxes in question upon the gross earnings of the Rutland road are a tax "upon the property of the Rutland Railroad Company," the case just cited is applicable to the case in hand.

The tax is not a franchise tax, as it is levied indiscriminately upon the earnings of all railroads operated in the State, irrespective of the source of their chartered power. Phil. S. S. Co. *v.* Pennsylvania, *supra*. It is in terms a tax upon the earnings of railroads rated by the mile. It is not a tax upon the company which operates a railroad nor upon the income received by such company, but upon the fares and freights which come from the operation of the particular road. The object of the legislature was to make each railroad in the State as a railroad contribute to the public treasury its proper share of the burdens of taxation. Under the act of 1874 the plan of treating railroads as real estate was adopted as the basis of a scheme of taxation. This act not proving acceptable, in 1882 the plan was adopted of graduating the taxation upon the basis of earnings. In both cases the tangible thing upon which the State laid its hand was the railroad itself, and, unless we substitute the shadow for the substance, the thing taxed under the act of 1882 was "the property of the Rutland R. R. Co."

That the tax in question was a tax which the Rutland R. R. Co. should pay is clearly seen by reference to the act itself. Sec. 11 provides that every corporation, person, or persons owning or operating a railroad in this State, whether as owner, lessee, receiver, trustee, or otherwise, should pay a tax to the State on the entire gross earnings of such railroad, &c.

56 The thing taxed was, then, the gross earnings of somebody's railroad. Who that somebody is can be learned from the 14th sec. When a railroad is operated in the State by a corporation, person, or persons by virtue of a lease or other contract, the aforesaid tax shall be paid by the lessee of such railroad or holder of such contract, as the case may be, and the said tax shall be charged against and deducted from any payments due or to become due the lessor of such railroad * * * on account of such lease or contract.

Now, then, when the act directs the Central to pay the tax and charge it against and deduct it from the rent due the Rutland it makes the Rutland in fact the tax-payer instead of the Central. The Central is the mere collector of the tax; the Rutland, the lessor, in the lease of its road is the party actually assessed, and if the Rutland is the tax-payer aimed at by the law it must be the property

of the Rutland that is assessed. The law reaches the property of the tax-payer it selects as the party liable for the tax.

It is not exactly sound to say that the Rutland has no gross earnings because it has rented its road, and under the contract the earnings go to the defendants. Under the modified lease the rent is made up from gross earnings. The defendants agree to pay a rent ascertained in a specified manner from the gross earnings of the Rutland road upon a basis fixed in the contract.

The defendants stipulate that the gross earnings shall equal at least the sum of $250,000. It is true a hotch-pot of the earnings of the Rutland, Addison, Canada, and Central roads is made; still by contract between the parties 36 & ¼ per cent. of the aggregate earnings of all said roads is set apart as an arbitrary, fixed, liquidated share of the whole earnings properly belonging to the Rutland and Addison roads. These roads, then, have earnings within the purview of the tax law as much so as the Canada and Central, and it was the earnings, *co nomine*, that the legislature designated as the subject to be taxed, irrespective of the question whether A or B was entitled to pocket such earnings.

It being, therefore, the duty of the Rutland to pay the taxes in question, the defendants have been compelled by law to discharge an obligation belonging to another. In such a case the law implies the request and the defendants would have an action to recover back such payments; but a court of equity will avoid a circuity of action wherever it is practicable to do so.

57 The notice given by Dr. Mead, the treasurer of the Rutland road, by letter dated Sep. 19, 1883, does not help the petitioner. The Rutland Company simply says that it claims the tax to be invalid. No suggestion or hint is made as to the ground of the invalidity, much less that the law was unconstitutional. Indeed, at that date, so far as any light had been thrown upon that question by the Supreme Court, the law stood as a valid law. If the defendants declined to pay the taxes they subjected themselves to heavy penalties. The Rutland Company made no offer to indemnify the defendants, and, as prudent men, the defendants could not do otherwise than pay.

They were under no duty to incur the expense and assume the perils of delay and of litigation to test the validity of a law passed by the legislature and which they had the right to assume was constitutional.

The petitioner comes into a court of equity to obtain the relief prayed for. It must do equity. It can only do equity by leaving the defendants where for the greater part of the time the law has left them, and where for the whole time they have been doing what as between the parties the petitioner should have done and what by its own laches the petitioner has suffered them to do professedly in its behalf.

Accordingly the defendants are not liable to pay as rent the amount paid by them as taxes upon the earnings of the Rutland road.

The decree is reversed and the cause remanded with mandate.

I hereby certify that the foregoing is a true copy of the opinion of the supreme court in the matter of the petition of the Rutland Railroad Company *v.* The Central Vermont Railroad Company and the Consolidated Railroad Company of Vermont, in the cause entitled Vt. & Canada Railroad Company *v.* Vermont Central Railroad Company *et al.*

Aug. 19, 1891.

JONATHAN ROSS,
Chief Justice of the Supreme Court of Vermont.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable chancellor of the court of chancery in and for the county of Franklin, State of Vermont, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of chancery, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Rutland Railroad Company, petitioner, and The Central Vermont Railroad Company and The Consolidated Railroad Company of Vermont, petitionees, in a cause entitled Vermont & Canada Railroad Company *vs.* Vermont Central Railroad Company *et al.*, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Rutland Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

59 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighth day of September,

[SEAL.] in the year of our Lord one thousand eight hundred and ninety-one.

GEO. E. JOHNSON,
Clerk of the Circuit Court of the United States
for the District of Vermont.

Allowed by—
JOHN W. ROWELL,
A Judge of the Supreme Court of Vermont and
Chancellor of the Court of Chancery in and
for the County of Franklin, in said State.

60 Know all men by these presents that we, Rutland Railroad Company, as principal, and E. T. Smith and C. A. Prouty, as sureties, are held and firmly bound unto Central Vermont Railroad Company and Consolidated Railroad Company of Vermont, both corporations of Vermont, in the full and just sum of one thousand dollars, to be paid to the said Central Vermont Railroad Company and Consolidated Railroad Company of Vermont, their certain attorneys, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of August, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a session of the court of chancery in and for the county of Franklin, in a suit depending in said court between the said Rutland Railroad Company, petitioner, and the said Central Vermont Railroad Company and the said Consolidated Railroad Company of Vermont, petitionees in a cause entitled Vermont & Canada Railroad Company *v.* Vermont Central Railroad Company *et al.*, a decree was rendered against the said Rutland Railroad Company, petitioner, and the said Rutland Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Central Vermont Railroad Company and the Consolidated Railroad Company of Vermont, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that *that* if the said Rutland Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

RUTLAND RAILROAD COMPANY,
By PERCIVAL W. CLEMENT, *President.* [L. S.]
EDWARD T. SMITH. [L. S.]
C. A. PROUTY. [L. S.]

Sealed and delivered in presence of—
GEORGE E. LAWRENCE.

Approved by—
JOHN W. ROWELL,
Judge of the Supreme Court of Vermont and Chancellor of the Court of Chancery in and for the County of Franklin.

Filed Sept. 7, 1891.

WILBUR P. DAVIS, *Clerk.*

61 THE UNITED STATES OF AMERICA, *ss:*

To the Central Vermont Railroad Company, a corporation of the State of Vermont, and the Consolidated Railroad Company of Vermont, a corporation of the same State, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington on the 3d day of October, A. D. 1891, pursuant to a writ of error filed in the office of the clerk of the court of chancery for the county of Franklin, State of Vermont, wherein the Rutland Railroad Company is the plaintiff in error and you are the defendants, to show cause, if any there be, why the decree against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John W. Rowell, judge of the supreme court of the State of Vermont and chancellor in and for the county of Franklin, in said State, this 3d day of September, A. D. 1891.

JOHN W. ROWELL,
Judge of the Supreme Court of Vermont and Chancellor of the Court of Chancery in and for the County of Franklin, in said State.

61½ [Endorsed:] Citation. Rutland Railroad Co., pl'ff in error, *v.* Central Vt. Railroad Co., *et al.*, def'ts in error.

Service of the within citation is hereby accepted.
St. Albans, Vt., Sept. 7, 1891.
CENTRAL VERMONT RAILROAD COMPANY,
By ALBERT P. CROSS, *Solicitor.*
CONSOLIDATED RAILROAD COMPANY OF VERMONT,
By ALBERT P. CROSS, *Solicitor.*

62 In the Supreme Court of the United States, October Term, 1891.

RUTLAND RAILROAD COMPANY, Pl'ff in Error,
v.
CENTRAL VERMONT RAILROAD Co. *et al.*, Def'ts in Error.

Assignment of Errors.

The plaintiff in error says that in the record of the above-entitled case there is manifest error in the following particulars:

1. It was error to decide that the statute of Vermont was not in contravention of the Constitution of the United States as impairing the obligation of a contract, in that it directed the Central Vermont Railroad Company, defendant in error, to pay to the State by way of taxes a part of that sum which by the express terms of its contract it had agreed to pay to the plaintiff in error.

63 2. It was error to decide that the statute of Vermont, although in fact void under the Constitution of the United States as a regulation of commerce, and to be so declared at the time of rendering the decree, was nevertheless to be treated as valid during the period covered by this suit, in view of the previous decisions of the Supreme Court of the United States upon that subject, and that therefore the said statute would protect the petitionee in making the payments made by it to the State as taxes, although against the protest of the petitioner.

3. It was error to hold that the petitioner could be, against its protest, deprived of the sums due to it from the petitionee under the contract of lease by virtue of the statute of Vermont, for the reason that said statute was in contravention of the Constitution of the United States, both as impairing the obligation of the contract and as a regulation of commerce.

4. That the decree and mandate of said supreme court of Vermont and the final decree of the court of chancery for Franklin county, in said State, made in obedience to the second and third sections of the said mandate, are each and every

64 of them erroneous and in denial of the just rights of the plaintiff in error, then and there claimed and set up under the Constitution of the United States, in respect of the matters drawn in question and decided in said suit.

5. It was error to direct and to render the decree appearing in the record.

Wherefore the plaintiff in error prays that the judgment of the supreme court of the State of Vermont and the decree of the court of chancery denying to it the right to recover of the Central Vermont Railroad Company, petitionee, the sums withheld as taxes may be reversed.

C. A. PROUTY,
Solicitor for Plaintiff in Error.

65 [Endorsed:] Assignment of errors. Rutland Railroad Co., pl'ff in error, *vs.* Central Vt. Railroad Co. *et al.*, def'ts in error.

66 STATE OF VERMONT, }
Franklin County. }

In the Court of Chancery in and for the County of Franklin and State of Vermont.

VERMONT AND CANADA RAILROAD COMPANY
vs.
VERMONT CENTRAL RAILROAD COMPANY & Others. } In Equity.

In the matter of the petition of the Rutland Railroad Company against The Central Vermont Railroad Company and The Consolidated Railroad Company of Vermont.

I, Wilbur P. Davis, clerk of the court of chancery within and for the county of Franklin and State of Vermont, do hereby certify that the foregoing 65 pages, numbered 1 to 65, both inclusive, contain a correct transcript and a true copy of the record of the
67 above-entitled cause in the court of chancery for the county of Franklin and State of Vermont, and of the opinion, and of all the proceedings of said court therein, and also the petition for the writ of error and the order of the chancellor of this court allowing the same, and of the bond given by the plaintiff in error, with the approval thereof, together with the original citation and the assignment of errors, and that the same constitute the return to the annexed writ of error.

In witness whereof I have subscribe- my name officially and attached hereto the seal of said court this 16th day of September, 1891.

[Seal Court of Chancery, Franklin County, Equity.]

WILBUR P. DAVIS, *Clerk.*

68 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable chancellor of the court of chancery, in and for the county of Franklin, State of Vermont, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of chancery, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Rutland Railroad Company, petitioner, and The Central Vermont Railroad Company and The Consolidated Railroad Company of Vermont, petitionees, in a cause entitled Vermont & Canada Railroad Company *vs.* Vermont Central Railroad Company *et al.*, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the

construction of a clause of the Constitution or of a treaty
69 or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Rutland Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighth day of September, in the year of our Lord one thousand eight hundred and ninety-one.

Seal Circuit Court, Vermont District, U. S. A.

GEO. E. JOHNSON,
Clerk of the Circuit Court of the United States for the District of Vermont.

Allowed by—
JOHN W. ROWELL,
A Judge of the Supreme Court of Vermont and Chancellor of the Court of Chancery in & for the County of Franklin, in said State.

[Endorsed:] Writ of error. Rutland Railroad Co., pl'ff in error, *v.* Central Vt. Railroad Co. *et al.*, def'ts in error.

Endorsed on cover: Case No. 14,858. Vermont, Franklin county chancery court. No. 299. The Rutland Railroad Company, plaintiff in error, *vs.* The Central Vermont Railroad Company. Filed September 23, 1891.